

Department of Revenue

Mass Gov. Home State Agencies State Online Services

DOR
Home

For
Individuals and Families

For
Businesses

For
Local Officials

For
Tax Professionals

Home > Businesses > Help & Resources > Legal Library > Letter Rulings > Letter Rulings - By Year(s) > (1985-1989) Rulings >

Letter Ruling 87-5: Distributions from Share Insurance Fund; Estimated Tax; Changes in Accounting Methods; Cooperative Banks

July 13, 1987

You have asked for an explanation of the application of the Massachusetts tax laws to a distribution from the Share Insurance Fund that the Co-operative Central Bank ("Bank") made to ninety-eight of its member banks. The facts as set out in your request are as follows.

The Bank is a tax-exempt organization under Internal Revenue Code § 501(c)(14)(B). It is operated and wholly owned by ninety-nine Massachusetts co-operative banks for the mutual benefit of their depositors as a source of cash reserves and of insurance in full of deposits under Massachusetts laws. Its member banks are "banks" subject to tax under G.L. c. 63, §§ 1, 2.

On April 29, 1987, under the provisions of St. 1985, c. 405, § 25, the Bank's board of directors declared a \$100 million dividend from the Share Insurance Fund payable to ninety-eight of the member banks of record as of April 29, 1987. The Bank Executive Committee voted to pay the dividend after May 20, 1987 because of lawsuits by former member banks or their successors to determine their eligibility to participate in the distribution. On June 9, 1987, the court hearing these suits lifted the temporary restraining order it had imposed on payment of the distribution. On that day, the Bank paid ninety-eight of its member banks dividends totaling \$100 million.

Most, if not all, of the member banks accrued their share of the distribution on their books as of April 30, 1987. For most, but not all, of the member banks, April 30, 1987 was the end of the fiscal year. As of April 30, 1987, the member banks generally maintained their books on the accrual method of accounting but used the cash method for filing their federal tax returns.

You ask us two questions: (1) whether member banks should treat the 10% excise of St. 1985, c. 405, on Share Insurance Fund distributions as a separate tax for estimated tax purposes under G.L. c. 63B; and (2) whether a member bank changing accounting methods this year may spread recognition of the Share Insurance Fund proceeds over several tax years for state tax purposes as the bank may be able to do for federal tax purposes. We conclude that: (1) member banks should treat the 10% excise as part of the excise under G.L. c. 63 for estimated tax purposes; and (2) member banks may not defer payment of the special tax of St. 1985, c. 405, even though the bank may be able to take those proceeds into income over the course of several tax years for federal tax purposes.

Under a provision of the federal Tax Reform Act of 1986 (P.L. 99-514), certain taxpayers with average annual gross receipts (calculated as set out in Code § 448 (c)) of more than \$5 million for tax years beginning after December 31, 1985 must change from the cash to accrual basis of accounting in their first tax year beginning after 1986. I.R.C. § 448. Banks are among the taxpayers covered by this new Code requirement. Banks making the § 448-required change must adjust their income for the year to prevent amounts from being duplicated or omitted as a result of the change in accounting method. See I.R.C. §§ 448(d)(7), 481(a). Section 448 limits any period allowed under § 481 for reflecting change-related adjustments to income to a maximum of four years (ten for a

SEARCH

Select an area to search

Search

hospital). I.R.C. § 448(d)(7). For most changes other than § 448-required changes, a taxpayer may take up to six years to reflect the adjustments in income. Rev. Proc. 84-74.

Special legislation, St. 1985, c. 405, provides for distributions such as the dividend from the Share Insurance Fund declared by the Bank's board of directors on April 29, 1987. Chapter 405 sets out a special procedure for the Bank to follow in declaring a Share Insurance Fund dividend which, among other things, requires approval of the distribution by the commissioner of banks. St. 1985, c. 405, § 26. That statute also includes provisions relating to the taxation of such distributions. Under § 34 of c. 405, if such a distribution totals \$ 30 million or more a bank that shares in the distribution must pay, "as part of its excise under [G.L. c. 63], "an amount equal to 10% of the proceeds received. Section 34 further provides that "[t]he proceeds subject to tax under this section shall not be considered gross income for purposes of determining net income as defined in section one of said chapter sixty-three." To the extent that revenues from the excise do not exceed \$35 million, the 10% excise paid by member banks on a Share Insurance Fund distribution of \$30 million or more goes not into the General Fund of the Commonwealth but instead into the Massachusetts Housing Partnership Fund created by § 35 of c. 405. St. 1985, c. 405, § 35.

Under Massachusetts law, banks pay a tax of 12.54% of their net income. G.L. c. 63, § 2. "Net income" is defined as "gross income from all sources, without exclusion, for the taxable year, less the deductions, but not credits, allowable under the provisions of the Federal Internal Revenue Code, as amended and in effect for the taxable year." G.L. c. 63, § 1. (The definition continues by disallowing particular deductions otherwise permitted under the Code.)

Banks must file a declaration of estimated tax for the taxable year if they expect their estimated tax for the taxable year to exceed \$1000. G.L. c. 63B, § 2. "Estimated tax" is defined as "the amount which the corporation [defined to include banks] estimates as the taxes required to be paid under chapter sixty-three or any act in lieu thereof, and under any act in addition thereto." G.L. c. 63B, § 1. Section 6 of G.L. c. 63B imposes a penalty for underpayment of estimated tax by a corporation but sets out exceptions to the imposition of a penalty. One of the exceptions provides that no penalty will be imposed if the estimated taxes for the current taxable year equal or exceed the tax shown on the return of the corporation for the preceding taxable year (where the corporation filed a return showing a liability for the preceding taxable year and the preceding taxable year was a full twelve months). G.L. c. 63B, § 6(b)(1).

Section 34 of St. 1985, c. 405 specifies that the 10% tax a member bank must pay on its Share Insurance Fund proceeds is part of its excise under G.L. c. 63, although the proceeds are excluded from net income under G.L. c. 63, § 1. This means that for administrative purposes, member banks must report and pay tax on the Share Insurance Fund proceeds along with the excise under G.L. c. 63, § 2. As a result, in determining its estimated tax for the taxable year, a member bank receiving such a dividend must include the 10% tax on the proceeds with the 12.54% tax it anticipates paying on its net income for the year.

If a member bank receives the dividend after it has filed its declaration of estimated tax for the taxable year, the member bank must amend the declaration to reflect the dividend as necessary under G.L. c. 63B to avoid underpayment penalties. In the taxable year following that in which a member bank receives the dividend, the "tax shown on the return of the [bank] for the preceding year" under G.L. c. 63B, § 6(b)(1), will include both the 10% tax on the Share Insurance Fund proceeds and the 12.54% excise on the member bank's net income.

Member banks changing accounting methods in the taxable year in which they receive the Share Insurance Fund proceeds -- whether a change required by Code § 448 or a voluntary change -- may find that for federal tax purposes, the proceeds are part of the adjustments to income required by Code § 481(a) as an item that would otherwise be omitted from income. For Massachusetts tax purposes, such member banks must make the same adjustments as Code § 481(a) requires in order to reflect their income for the year fairly and accurately.

Member banks may not, however, spread recognition of Share Insurance Fund distribution income over several tax years (thus spreading out payment of the 10% excise). The legislature enacted the 10% excise as a special tax: imposed by a special statute, at a special rate, on a special distribution declared under a special procedure, ear-marked for a special purpose. The legislature also specifically excluded Share Insurance Fund proceeds from net income under G.L. c. 63, § 1. As a result, member banks may not defer payment of the 10% excise as they may be able to defer payment of the G.L. c. 63, § 2 excise on other such Code § 481(a) adjustments under the provisions of Code § 448(d)(7) and Rev. Proc. 84-74. If a member bank pays the 10% excise in the year it receives the Share Insurance Fund proceeds, while taking the proceeds into income over the period

allowed under Code § 448(d)(7) and Rev. Proc. 84-74 for federal tax purposes, then the member bank will reduce its federal taxable income in subsequent years to the extent its federal taxable income includes a portion of the proceeds.

Very truly yours,
/s/Ira A. Jackson
Ira A. Jackson
Commissioner of Revenue
IAJ:KKP:scr
LR 87-5